



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Capital Reon Housing Corporatio and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes: FFL MNDL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the *Act*") for:

- a monetary order for money owed or compensation monetary loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing and evidence package. In accordance with sections 88 and 89 of the *Act*, I find that the tenant duly served with the landlord's application and evidence. The tenant did not submit any written evidence for his hearing.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for losses?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony provided in the hearing, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on March 1, 2018, with monthly rent currently set at \$1,410.00, payable on the first of the month. The landlord collected a security deposit in the amount of \$675.00, which the landlord still holds.

It was undisputed by both parties that on July 11, 2019, the tenant had driven his vehicle into the rental unit, causing damage to the rental unit. The landlord is seeking a monetary order in the amount of \$12,266.97 to cover the losses associated with the repairs related to this incident, plus recovery of the \$100.00 filing fee paid for this application.

The landlord submitted a copy of the invoice for repairs, as well as the correspondence showing that the tenant's vehicle insurance did not include loss for property damage. The landlord testified that the resulting damage included damage to the exterior wall, interior wall, as well as structural crack. The landlord testified that although they did have insurance coverage, the deductible was \$50,000.00.

The tenant is disputing the claim because he was not given the option to perform the repairs himself, nor were competing quotes presented. The tenant testified that he is a plumber, and the landlord could have mitigated their losses by allowing him to perform some of the repairs. The tenant also feels that the landlord failed to install bollards or a cement block around the building, which could have reduced the amount of damage to the building.

The landlord responded that that the building was built in the early 1980s when there was no requirement for a cement block or bollard, and accordingly the building is compliant with all codes. The landlord responded that the nature of the repairs were not simple, and included repairs for structural damage which must be completed by a company designated to complete these repairs order to ensure the safety of all occupants in the building.

Analysis

Section 32 of the *Act* outlines the following obligations of the landlord and the tenant to repair and maintain a rental property:

Landlord and tenant obligations to repair and maintain

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

- (a) complies with the health, safety and housing standards required by law, and
 - (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.
- (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.
- (3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.
- (4) A tenant is not required to make repairs for reasonable wear and tear.
- (5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

Section 33 of the *Act* states the following in regards to emergency repairs:

Emergency repairs

- 33** (1) In this section, "emergency repairs" means repairs that are
- (a) urgent,
 - (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
 - (c) made for the purpose of repairing
 - (i) major leaks in pipes or the roof,
 - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
 - (iii) the primary heating system,
 - (iv) damaged or defective locks that give access to a rental unit,
 - (v) the electrical systems, or
 - (vi) in prescribed circumstances, a rental unit or residential property.

(2) The landlord must post and maintain in a conspicuous place on residential property, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs.

(3)A tenant may have emergency repairs made only when all of the following conditions are met:

- (a)emergency repairs are needed;
- (b)the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;
- (c)following those attempts, the tenant has given the landlord reasonable time to make the repairs.

(4)A landlord may take over completion of an emergency repair at any time.

(5)A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

- (a)claims reimbursement for those amounts from the landlord, and
- (b)gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

(6)Subsection (5) does not apply to amounts claimed by a tenant for repairs about which the director, on application, finds that one or more of the following applies:

- (a)the tenant made the repairs before one or more of the conditions in subsection (3) were met;
- (b)the tenant has not provided the account and receipts for the repairs as required under subsection (5) (b);
- (c)the amounts represent more than a reasonable cost for the repairs;
- (d)the emergency repairs are for damage caused primarily by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Under Section 33 (1)(c) of the *Act*, the damage to the structure of the building, and associated repairs, may be considered emergency repairs.

I have considered the sworn testimony of both parties as well as the documentation provided for this hearing. I am satisfied that the landlord had complete emergency repairs due to the damage caused by the tenant's actions. I accept the landlord's testimony that the building was compliant with code, and I find that the damage was caused directly by the actions of the tenant.

I find that the landlord provided sufficient evidence to support that they suffered a monetary loss of \$12,266.97 to repair the damage.

The tenant testified that the landlord failed to mitigate the tenant's exposure to the landlord's losses by failing to allow the tenant to perform some of the repairs himself or obtain competing quotes. Residential Tenancy Policy Guideline #5 addresses a landlord's duty to minimize loss and states the following:

"Where the landlord or tenant breaches a term of the tenancy agreement or the Residential Tenancy Act or the Manufactured Home Park Tenancy Act (the Legislation), the party claiming damages has a legal obligation to do whatever is reasonable to minimize the damage or loss¹. This duty is commonly known in the law as the duty to mitigate. This means that the victim of the breach must take reasonable steps to keep the loss as low as reasonably possible. The applicant will not be entitled to recover compensation for loss that could reasonably have been avoided.

The duty to minimize the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring. The tenant who finds his or her possessions are being damaged by water due to an improperly maintained plumbing fixture must remove and dry those possessions as soon as practicable in order to avoid further damage. If further damages are likely to occur, or the tenant has lost the use of the plumbing fixture, the tenant should notify the landlord immediately. If the landlord does not respond to the tenant's request for repairs, the tenant should apply for an order for repairs under the Legislation². Failure to take the appropriate steps to minimize the loss will affect a subsequent monetary claim arising from the landlord's breach, where the tenant can substantiate such a claim.

Efforts to minimize the loss must be "reasonable" in the circumstances. What is reasonable may vary depending on such factors as where the rental unit or site is located and the nature of the rental unit or site. The party who suffers the loss need not do everything possible to minimize the loss, or incur excessive costs in the process of mitigation.

The Legislation requires the party seeking damages to show that reasonable efforts were made to reduce or prevent the loss claimed."

I am satisfied that the landlord had made an effort to mitigate the tenant's exposure to the landlord's monetary losses as is required by section 7(2) of the Act. I find that the landlord had an obligation to ensure the safety of the building and all occupants by responding immediately upon being notified of the damage to the building. I find that the landlord provided sufficient evidence to support that the damage necessitated repairs, which included repairs to the structure of the building. I have considered the tenant's concerns that he was not given the opportunity to perform the repairs himself. I find that

due to the nature of the repairs, the landlord had an obligation to ensure the safety of all occupants, as well as preservation of the building. I am not satisfied that the tenant had provided sufficient evidence to support that he had the certification or expertise to perform these repairs himself. I also find that the landlord had the right to perform these repairs as allowed under section 33(4) of the *Act*. I find that the \$12,266.97 paid by the landlord to be reasonable, I find that the landlord had considered other options in order to mitigate the losses including claiming through insurance which required a \$50,000.00 deductible. I find that the tenant's own insurance coverage did not include coverage for the property damage. Although the landlord did not obtain multiple quotes for repairs, I accept the landlord's explanation that they had to act in a timely manner to begin the repairs. I find the steps taken by the landlord to be reasonable, and meet the requirements of section 7(2) of the *Act*. Accordingly, I find that the landlord is entitled to a monetary order in the amount of \$12,266.97 in satisfaction of the monetary loss suffered by the landlord due to the tenant's actions.

I find that the landlord's application has merit and that the landlord is entitled to recover the fee for filing this application.

Conclusion

I issue a monetary order in the amount of \$12,366.97 in the landlord's favour which allows the landlord compensation for the monetary loss suffered due to the actions of the tenant, as well as recovery of the filing fee for this application.

The tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: December 16, 2020

Residential Tenancy Branch